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Office of Economic Development

Approved by: Mark Beutelchies
Assistant County Attorney

RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE APPROVING POLICY AND PROGRAM CHANGES TO THE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND THE COUNTY OF SHELBY'S PAYMENT-IN-LIEU-OF-TAX (PILOT) PROGRAM AND AUTHORIZING ANY NECESSARY AMENDMENTS TO ITS CORPORATE CHARTER AND OTHER DOCUMENTS. SPONSORED BY COMMISSIONER JAMES HARVEY.

WHEREAS, In 1987, the Board of County Commissioners of Shelby County, Tennessee, and the Memphis City Council granted the Industrial Development Board of the City of Memphis and County of Shelby authority to provide financial incentives in the form of payment in lieu of ad valorem taxes (PILOT) to attract new businesses and new job opportunities; and

WHEREAS, The policies of the Industrial Development Board have been amended over the years to strengthen the program and provide benefits commensurate with the level of investment, the number of jobs, and wages provided by businesses receiving a PILOT and to ensure performance of the commitments in these areas, the most recent amendments having been adopted in 2007 upon the recommendation of the Memphis City Council and the Board of County Commissioners of Shelby County, Tennessee; and

WHEREAS, The PILOT program has become the key recruitment tool for Memphis and Shelby County in attracting new jobs and investment, using a nationally recognized benefit versus cost analysis and matrix scoring system to ensure that new jobs recruited to the community generate more revenues than taxes forgiven; and

WHEREAS, The Industrial Development Board has managed the PILOT program to benefit the community, with PILOTs approved from 2004 through 2008 projected to generate \$276 million in local economic benefit while costing \$171 million in forgiven taxes according to data compiled by the Memphis and Shelby County Office of Planning and Development; and

WHEREAS, Data from the Industrial Development Board's 2007 Annual Reports, compiled by the Memphis and Shelby County Office of Planning and Development, shows that active PILOT projects have created 22,359 new jobs, which is 1,321 more jobs than the 21,038 jobs committed to the IDB; and

WHEREAS, Memphis and Shelby County's unique location at the center of the country combined with its unparalleled infrastructure and multimodal transportation capacity makes Memphis and Shelby County an attractive place for business; and

WHEREAS, The competition between cities to attract new jobs and industry has grown dramatically over the past decade, both with traditional peer cities and, most notably, with other parts of the Memphis, TN-MS-AR, Metropolitan Area; and

WHEREAS, Due to a variety of factors, other parts of the Metropolitan Area have been increasingly successful in attracting business over the past several years as evidenced by faster growth in construction and leasing of warehouse/distribution space in outlying areas surrounding Shelby County; and

WHEREAS, A number of PILOT program policies have imposed an unintended burden on businesses making it more costly, and in some cases uneconomical, for them to locate or expand their business in Shelby County or to receive financing, causing said companies to locate their facilities in other communities; and

WHEREAS, The Board of County Commissioners of Shelby County, Tennessee, desires to improve the PILOT program and policies by approving the amendments set forth in Exhibit A, attached hereto and incorporated herein by reference, so as to make the community more competitive in attracting jobs and investment while protecting and providing the most cost-effective opportunities for its taxpayers.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SHELBY COUNTY, TENNESSEE, That the changes to the PILOT program's policy and program outlined in Exhibit A, attached hereto and incorporated herein by reference, be and are hereby approved and the Industrial Development Board of the City of Memphis and County of Shelby is hereby authorized to immediately take whatever action is necessary to effectuate said changes.

BE IT FURTHER RESOLVED, That should the provisions, outlined in Exhibit A conflict with any previous Resolution of the Board of Commissioners of Shelby County, Tennessee, the provisions of this Resolution shall prevail.

BE IT FURTHER RESOLVED, That the Industrial Development Board of the City of Memphis and County of Shelby is hereby authorized to amend its Corporate Charter, its Policy Manual, other governing or guidance documents, and its leases and other legal documents as necessary to implement the policy and program changes outlined in Exhibit A.

BE IT FURTHER RESOLVED, That, notwithstanding any prior Resolution adopted by the Board of County Commissioners of Shelby County, Tennessee, the Industrial Development Board of the City of Memphis and the County of Shelby is hereby authorized to apply policy and program changes adopted pursuant to this Resolution to PILOTs approved subsequent to April 1, 2007.

BE IT FURTHER RESOLVED, That this Resolution shall take effect from and after the date it shall have been enacted according to due process of law, the public welfare requiring it, but the changes to the PILOT program outlined in Exhibit A shall only become effective if the City Council of the City of Memphis, Tennessee adopts a resolution approving same.

A C Wharton, Jr.
County Mayor

Date: _____

ATTEST:

Clerk of County Commission

ADOPTED: _____

Exhibit A

ADMINISTRATIVE PROVISIONS

1. **Compliance:** The Industrial Development Board (“IDB”) will expand and enhance its compliance procedures, including random site visits, verification of wages and employees, coordination with city and county audit departments and the coordination with the trustee and treasurer with respect to delinquent parcels. The IDB shall develop a streamlined process, beginning during the “Ramp-up Period,” to identify potential problems, determine the existence of defaults and to take appropriate action.
2. **Reporting:** The IDB shall forward copies of all meeting minutes to the Commission in a timely manner. In addition, IDB staff shall report semi-annually to the Commission’s Economic Development & Tourism Committee on the number and characteristics of the projects approved, the status of the PILOT portfolio, and other issues of interest and concern to the Commission.
3. **PILOT Incentive Scoring Matrix:** The IDB shall continue to use a matrix process to evaluate applications for the PILOT incentive program. To insure the community is attractive for large employers and/or those with highly compensated jobs, the Board shall:
 - a. **Jobs:** Award matrix points for all jobs, as determined by the IDB, without penalizing large employers by placing limits on the number of total points they may earn or by reducing or eliminating the incentive for jobs created above a threshold number.
 - b. **Wages/Benefits:** Award matrix points for all wages and benefits paid, as determined by the IDB, without penalizing employers with highly compensated jobs by placing limits on the number of total points they may earn or by reducing or eliminating the incentive for wages/benefits above a threshold number. With the exception of Major Tourism Projects as defined below, only jobs that meet the threshold targets as determined by the IDB for median wage and median wage plus benefits may qualify for a PILOT. Additionally, the IDB will continue to set an absolute minimum wage below which a job cannot be counted in the matrix. Finally, all projects requesting a PILOT must include health care benefits with a minimum one-half (1/2) of the benefit paid by the employer.
4. **But-For Test:** To insure that the IDB has qualitative information needed to make sound decisions and that the community can better understand why those decisions were made, replace the existing “But-For Test” in the PILOT application process with a requirement that applicants discuss the competitive environment for their project and the primary factors that will determine the location of that project.
5. **Cap on PILOT Term:** To insure that viable properties remain attractive to expansion and attraction projects and that the IDB is not limited in its mission to grow jobs and investment in Shelby County, the IDB will clarify that the cap on the number of years in the PILOT program refers to a specific project, not a parcel of real estate. At its discretion, the IDB may award a new PILOT to a project that will occupy a building in which a previous PILOT recipient operated, without regard to how many years the prior PILOT occupant had been awarded. That prior PILOT has no bearing on the value of the current project and therefore shall have no impact on the IDB’s decision.
6. **Complex Projects with Multiple Sites:** While not common, the IDB shall reiterate its willingness to consider projects under a single PILOT -- so as to minimize the time, energy and cost of all concerned – that as determined by the IDB reasonably includes: (a) PILOT-assisted investment at one or more contiguous or non-contiguous sites; and (b) associated job creation counted within the PILOT scoring matrix at those and other contiguous or non-contiguous sites in Shelby County identified in the PILOT application. To facilitate monitoring and accommodate future business contingencies, for the purpose of counting jobs for reporting purposes, all sites approved by the IDB will be considered as one.

SUBSTANTIVE PROCEDURES

1. **Recapture Payments/Default Provisions:** To better balance the desire to protect the community against potential risk while at the same time providing an inviting and

competitive environment to retain and attract new jobs and investments, the IDB shall institute a 3-year test as outlined below, reporting to the Commission annually on the number and nature of non-performing PILOT projects. Under this test, the IDB shall:

- a. **Bankruptcy/Closure:** Immediately refer to the Performance & Review Committee all PILOTs where the company has ceased operations or filed for protection under Chapter 7 of Title 11 of the United States Code at any time during the PILOT lease term. Once the Committee determines that retaining the PILOT is not necessary to attract a successor who will retain the jobs and investment as required in the PILOT lease, the Committee shall recommend the IDB terminate the PILOT lease. As closing/bankruptcy is an unanticipated loss on all concerned, no further remedy is provided.
 - b. **Relocation Prior to End of PILOT Term:** Immediately terminate the PILOT lease if a company moves prior to the end of its PILOT term without prior IDB approval. Though current policy provides for a “Recapture” of forgone tax revenues, no further remedy is provided during the test period. This component will be closely monitored by the IDB and reported to the Commission to determine if the benefit of not requiring costly letters of credit or escrowed funds outweighs any real loss to the taxpayers.
 - c. **Default at Any Time During PILOT Term:** Immediately refer to the Performance & Review Committee all PILOTs when the company has not, or indicates it cannot, meet its performance requirements. The Performance & Review Committee will recommend to the IDB a “claw back” or reduction of the PILOT term by applying the matrix used to award the benefit to the firm’s actual performance metrics.
2. **Major Tourism Projects:** To provide an additional tool to attract major tourism projects that will add significant benefit to the County’s economy, the IDB shall have the authority to waive its median and minimum wage/benefit thresholds and the requirement for health care benefits and include in the matrix calculation of PILOT benefits full-time equivalent jobs for projects that meet the thresholds for participating projects under the Convention Center and Tourism Development Financing Act of 1998 (Title 7, Chapter 88 of the Tennessee Code). Those thresholds currently require, in part, a combined public and private investment of \$200 million or \$100 million for a privately owned/operated amusement or theme park.
3. **Residency Requirement:** The IDB shall encourage all PILOT recipients to hire as many Shelby County residents as feasible and provide a list of available service providers who can assist in that effort. To eliminate the cost and uncertainty firms have in sourcing the talent they need and in monitoring and enforcing residency requirements on their personnel, the IDB shall remove the requirement that seventy five percent (75%) of all PILOT recipient employees reside in Shelby County.
4. **Evaluation Committee:** To streamline the PILOT application review process, the role of the Evaluation Committee shall be integrated into the full IDB which shall at one meeting, unless special circumstances require additional time, receive the staff evaluation and recommendation, question the applicant, determine the project’s merits and decide whether to award a PILOT and, if so, at what level.